

# Notice of Allowability

Application No.

10/038,989

Examiner

Michael T. Thier

Applicant(s)

MIERNIK ET AL.

Art Unit

2617

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/31/2006.
2. ☒ The allowed claim(s) is/are 21-29 and 31-39.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
GEORGE ENG  
SUPERVISORY PATENT EXAMINER

## DETAILED ACTION

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Christa Brown-Sanford on 8/8/2006.

Claims 31-39 are amended in this examiners amendment. The claims are amended as follows:

31. **(Currently Amended)** The ~~system~~ software of Claim 32, the ~~logic~~ software further operable to determine the base service class and the upgraded service class for the connection from a service policy associated with the connection.

32. **(Currently Amended)** ~~A system~~ Software for determining a service class for a connection to be established, the software embodied in a computer readable medium and operable to: ,comprising:  
logic encoded in media;  
~~the logic operable to~~ determine a base service class for the ~~connection,~~  
~~to connection;~~  
determine an upgraded service class for the ~~connection,~~ to connection;

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determine whether a performance increase is available to the connection by upgrading its service class from the base service class to the upgraded service ~~class, to~~ class;

estimate the performance increase available to the connection by upgrading its service class from the base service class to the upgraded service class, ~~and to~~ ; and

upgrade the service class if the performance increase meets an upgraded criteria.

33. **(Currently Amended)** The ~~system~~ software of Claim 32, the ~~logic~~ software further operable to determine the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on packet delay of at least one of the base service class and the upgraded service class.

34. **(Currently Amended)** The ~~system~~ software of Claim 33, the ~~logic~~ software further operable to determine the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on packet delay at both of the base service class and the upgraded service class.

35. **(Currently Amended)** The ~~system~~ software of Claim 33, the ~~logic~~ software further operable to determine the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on packet drop of at least one of the base service class and the upgraded service class.

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36. **(Currently Amended)** The **system software** of Claim 33, the **logic software** further operable to determine the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on packet drops at both of the base service class and the upgraded service class.

37. **(Currently Amended)** The **system software** of Claim 33, the **logic software** further operable to determine the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on a current packet queue size of each of the base and the upgraded service classes for a sector of a wireless network in which the connection is to be established.

38. **(Currently Amended)** The **system software** of Claim 33, the **logic software** further operable to determine the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on a floating window average of the packet queue size for a sector of a wireless network in which the connection is to be established.

39. **(Currently Amended)** The **system software** of Claim 33, the **logic software** further operable to determine the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on both measured and forecasted criteria for both of the base service class and the upgraded service class.

***Allowable Subject Matter***

2. Claims 21-29 and 31-39 are allowed over the prior art of record.

The following is an examiner's statement of reasons for allowance:

The idea of "estimating the performance increase available to the connection by upgrading its service class from the base service class to the upgraded service class; and upgrading the service class if the performance increase meets an upgraded criteria" has not been taught by any of the prior art of record. Independent claims 22 and 32 both recite this limitation and claims 21, 23-29, 31, and 33-39 depend from these claims, and thus are allowed for the same reasons.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael T. Thier whose telephone number is (571) 272-2832. The examiner can normally be reached on Monday thru Friday 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael T Thier  
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8/9/2006



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